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SENATE BILL 916*
Judiciary I Committee Substitute Adopted 4/29/03
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Short Title: Prevent Personal and Workplace Violence.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE
3 PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND
4 INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to
7 read:

8 **"Chapter 50C.**

9 **"Civil No-Contact Orders.**

10 **"§ 50C-1. Short title.**

11 This Chapter may be cited as the 'Civil No-Contact Order Act'.

12 **"§ 50C-2. Definitions.**

13 The following definitions apply in this Chapter:

- 14 (1) Abuse. – Any physical or mental maltreatment, harassment,
15 intimidation, or interference with the personal liberty of another.
- 16 (2) Civil no-contact order. – A temporary or permanent order granted
17 under this Chapter, which includes a remedy authorized by G.S.
18 50C-9.
- 19 (3) Employer. – Any person or entity that employs one or more
20 employees. Employer also includes the State of North Carolina and its
21 political subdivisions.
- 22 (4) Nonconsensual. – A lack of freely given consent.
- 23 (5) Sexual conduct. – Any intentional or knowing touching, fondling, or
24 sexual penetration by a person, either directly or through clothing, of
25 the sexual organs, anus, or breast of another, whether an adult or a
26 minor, for the purpose of sexual gratification or arousal. For purposes
27 of this subdivision, the term shall include the transfer or transmission
28 of semen.

- 1 (6) Sexual penetration. – Any contact, however slight, between the sexual
2 organ or anus of one person by an object, the sexual organ, mouth, or
3 anus of another person or any intrusion, however slight, of any part of
4 the body of one person or of any animal or object into the sexual organ
5 or anus of another person, including acts of cunnilingus, fellatio, or
6 anal penetration. Evidence of emission of semen is not required to
7 prove sexual penetration.
- 8 (7) Stalking. – Following on more than one occasion or otherwise
9 harassing, as defined in G.S. 14-277.3(c), another person without legal
10 purpose with the intent to do any of the following:
- 11 a. Place the person in reasonable fear either for the person's safety
12 or the safety of the person's immediate family or close personal
13 associates.
- 14 b. Cause that person to suffer substantial emotional distress by
15 placing that person in fear of death, bodily injury, or continued
16 harassment, and that in fact causes that person substantial
17 emotional distress.
- 18 (7) Unlawful conduct. – Unlawful conduct means the commission of one
19 or more of the following acts upon a person but does not include acts
20 of self-defense or defense of others:
- 21 a. Attempting to cause bodily injury or intentionally causing
22 bodily injury.
- 23 b. Nonconsensual sexual conduct, including single incidences of
24 nonconsensual sexual conduct.
- 25 c. Stalking.
- 26 d. Willfully threatening, orally, in writing, or by any other means,
27 to physically injure the victim in a manner and under
28 circumstances that would cause a reasonable person to believe
29 that the threat is likely to be carried out and that actually causes
30 the victim to believe that the threat will be carried out.
- 31 (8) Victim. – A person against whom an act of unlawful conduct has been
32 committed.

33 **"§ 50C-3. Civil no-contact orders; persons protected.**

34 A petition for a civil no-contact order may be filed in civil district court by any of
35 the following:

- 36 (1) A person who is a victim of unlawful conduct.
- 37 (2) A person on behalf of a minor child or an incompetent adult, who is a
38 victim of unlawful conduct who cannot file the petition on his or her
39 own behalf.
- 40 (3) An employer on behalf of an employee who has suffered unlawful
41 conduct from any individual that can reasonably be construed to be
42 carried out, or to have been carried out, at the employee's workplace.
43 The employee that is the subject of unlawful conduct shall be
44 consulted prior to seeking an injunction under this Chapter in order to

1 determine whether any safety concerns exist in relation to their
2 participation in the process. Employees who are targets of unlawful
3 conduct who are unwilling to participate in the process under this
4 Chapter shall not face disciplinary action based on their level of
5 participation or cooperation.

6 **"§ 50C-4. Commencement of action; filing fees not permitted; assistance.**

7 (a) An action for a civil no-contact order is commenced by filing a petition for a
8 civil no-contact order in any civil district court.

9 (b) The court shall charge no fees for filing or certifying petitions for civil
10 no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a
11 petition, rule, motion, or order in an action commenced under this section.

12 (c) The court shall provide, through the office of the clerk of the court, simplified
13 forms and clerical assistance to any person not represented by counsel or in need of help
14 with the writing or filing of a petition under this section.

15 **"§ 50C-5. Pleadings; nondisclosure of address.**

16 (a) A petition for a civil no-contact order shall be in writing and verified, or
17 accompanied by an affidavit, and shall allege either of the following:

18 (1) That the petitioner or the person on whose behalf the petition is
19 brought is or has been the victim of unlawful conduct by the
20 respondent.

21 (2) That the employee has suffered unlawful conduct from the respondent
22 that can reasonably be construed to be carried out, or to have been
23 carried out, at the employee's workplace.

24 (b) If, in the petition, the victim states that disclosure of the victim's address
25 would place the victim or any member of the victim's family or household at risk for
26 further abuse, the victim's address may be omitted from all documents filed with the
27 court. If the victim has not disclosed an address under this subsection, the victim shall
28 designate an alternative address to receive notice of any motions or pleadings from the
29 opposing party.

30 **"§ 50C-6. Venue.**

31 A petition for a civil no-contact order may be filed in any of the following counties:

32 (1) Where the petitioner resides.

33 (2) Where the respondent resides.

34 (3) Where the unlawful conduct took place.

35 (4) Where the place of employment is located.

36 **"§ 50C-7. Process for action for no-contact order.**

37 (a) Any action for a civil no-contact order requires that a separate summons be
38 issued and served. The summons issued pursuant to this Chapter shall require the
39 respondent to answer or appear in court within 10 days. Attachments to the summons or
40 notice shall include the petition for the civil no-contact order and supporting affidavits,
41 if any, or any emergency civil no-contact order that has been issued.

42 (b) The summons shall be served by the sheriff or other law enforcement officer
43 at the earliest time and shall take precedence over other summonses except those of a
44 similar emergency nature.

1 (c) Service of process on a member of the respondent's household or by
2 publication shall be adequate if the following apply:

3 (1) The petitioner has made all reasonable efforts to accomplish actual
4 service of process personally upon the respondent, but the respondent
5 cannot be found to effect the service.

6 (2) The petitioner files an affidavit or presents sworn testimony as to those
7 efforts.

8 (d) The court may enter a civil no-contact order by default for the remedy sought
9 in the petition, if the respondent has been served or given notice in accordance with this
10 section and fails to appear as directed or fails to appear on any subsequent appearance
11 or hearing date agreed to by the parties or set by the court.

12 **"§ 50C-8. Hearsay exception.**

13 (a) In proceedings for a civil no-contact order or prosecutions for violating a civil
14 no-contact order, the prior sexual activity or the reputation of the victim is inadmissible
15 except under the following circumstances:

16 (1) As evidence concerning the past sexual conduct of the victim with the
17 respondent when this evidence is offered by the respondent regarding
18 the issue of whether the victim consented to the sexual conduct as
19 related to the offense being alleged.

20 (2) When constitutionally required to be admitted.

21 (b) No evidence admissible under this section may be introduced unless ruled
22 admissible by the trial judge after an offer of proof has been made at a hearing held in
23 camera. At this hearing, the court shall determine whether the respondent has evidence
24 to impeach the witness in the event that prior sexual activity with the respondent is
25 denied. The offer of proof shall include reasonably specific information as to the date,
26 time, and place of the past sexual conduct between the victim and the respondent.
27 Unless the court finds that reasonably specific information as to date, time, or place or
28 some combination thereof, has been offered as to prior sexual activity with the
29 respondent, counsel for the respondent shall be ordered to refrain from inquiring into
30 prior sexual activity between the victim and the respondent. The court shall not admit
31 evidence under this section unless it determines at the hearing that the evidence is
32 relevant and the probative value of the evidence outweighs the danger of unfair
33 prejudice. The evidence is admissible at trial to the extent the court specifies the
34 evidence that may be admitted and the areas in which the victim may be examined or
35 cross-examined.

36 **"§ 50C-9. Civil no-contact order; remedy.**

37 (a) If the court finds that the petitioner has proven that the petitioner, the person
38 on whose behalf the petition was brought, or employee is a victim of unlawful conduct a
39 civil no-contact order shall issue. However, the petitioner must satisfy the requirements
40 of G.S. 50C-10 for emergency orders or G.S. 50C-11 for permanent orders. In
41 determining whether or not to issue a civil no-contact order, the court shall not require
42 physical injury on the person of the victim.

43 (b) The court may include any one or more of the following orders in its
44 temporary or permanent orders under this Chapter:

- 1 (1) Order the respondent not to visit, assault, molest, or otherwise interfere
2 with the victim, the employer or the employer's operations, or the
3 employer's employee at the employer's workplace.
- 4 (2) Order the respondent to cease stalking the victim, including at the
5 victim's workplace.
- 6 (3) Order the respondent to cease harassment of the victim or employer.
- 7 (4) Order the respondent not to abuse or injure the victim or the employer,
8 including the employer's property.
- 9 (5) Order the respondent not to telephone the victim or the employer.
- 10 (6) Order the respondent to refrain from entering or remaining present at
11 the victim's residence, school, place of employment, or other specified
12 places at times when the victim is present, if reasonable.
- 13 (7) Order other relief deemed necessary and appropriate by the court.
- 14 (c) Denial of a remedy shall not be based, in whole or in part, on evidence that:
- 15 (1) The respondent had cause for use of force, unless the use of force was
16 justified as determined by the court.
- 17 (2) The respondent was voluntarily intoxicated.
- 18 (3) The victim acted or failed to act in self-defense or defense of another.
- 19 (4) The victim left or failed to leave the residence or household to avoid
20 further unlawful conduct by the respondent.
- 21 (d) Monetary damages are not recoverable as a remedy under this Chapter.

22 **"§ 50C-10. Temporary civil no-contact order; court holidays and evenings.**

- 23 (a) A court may issue a temporary civil no-contact order if the petitioner satisfies
24 the following requirements:
- 25 (1) The petitioner has met the requirements of G.S. 50C-9.
- 26 (2) There is good cause to grant the remedy, regardless of prior service of
27 process or of notice upon the respondent, because the harm that the
28 remedy is intended to prevent would likely occur if the respondent
29 were given any prior notice or greater notice than was actually given
30 of the petitioner's efforts to obtain judicial relief.
- 31 (b) If the respondent appears in court for this hearing for a temporary order, the
32 respondent may elect to file a general appearance and testify. Any resulting order may
33 be a temporary order, governed by this section. Notwithstanding the requirements of
34 this section, if all requirements of G.S. 50C-11 have been met, the court may issue a
35 permanent order.
- 36 (c) When the court is unavailable at the close of business, the petitioner may file
37 a petition for a 21-day temporary order before any available judge or magistrate who
38 may grant relief under this Chapter. If the judge or magistrate finds that there is an
39 immediate and present danger of abuse against the petitioner or victim and that the
40 petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the
41 judge or magistrate may issue a temporary civil no-contact order.
- 42 (d) The chief district court judge may designate for each county at least one
43 judge or magistrate to be reasonably available to issue orally, by telephone, by

1 facsimile, or otherwise an emergency civil no-contact order at all times, whether or not
2 the court is in session.

3 **"§ 50C-11. Permanent civil no-contact order.**

4 A permanent civil no-contact order shall issue if the petitioner has served notice of
5 the hearing for the permanent civil no-contact order on the respondent in accordance
6 with G.S. 50C-7 and satisfied the following requirements:

7 (1) The petitioner has met the requirements of G.S. 50C-9.

8 (2) A general appearance was made or filed by or for the respondent or
9 process was served on the respondent in the manner required by G.S.
10 50C-7.

11 (3) The respondent has answered or is in default.

12 **"§ 50C-12. Duration; extension of orders.**

13 (a) Unless reopened, extended, or voided by entry of an order of greater duration,
14 a temporary civil no-contact order shall be effective for not less than 14 days or greater
15 than 21 days.

16 (b) Except as otherwise provided in this section, a permanent civil no-contact
17 order shall be effective for a fixed period of time, not to exceed one year. A permanent
18 civil no-contact order entered in conjunction with another civil proceeding shall remain
19 in effect as follows:

20 (1) If entered as preliminary relief in the other civil proceeding, until entry
21 of final judgment in the other civil proceeding.

22 (2) If incorporated into the final judgment in the other civil proceeding,
23 until the civil no-contact order is vacated or modified.

24 (3) If incorporated in an order for involuntary commitment, until
25 termination of both the involuntary commitment and any voluntary
26 commitment, or for a fixed period of time not exceeding one year.

27 (c) Any temporary or permanent order may be extended one or more times, as
28 required, provided that the requirements of G.S. 50C-10 or G.S. 50C-11, as appropriate,
29 are satisfied. The court may renew a temporary or permanent order, including an order
30 that previously has been renewed, upon a motion by the petitioner filed before the
31 expiration of the current order. The court may renew the order for good cause. The
32 commission of an act of unlawful conduct by the respondent after entry of the current
33 order is not required for an order to be renewed. If the motion for extension is
34 uncontested and the petitioner seeks no modification of the order, the order may be
35 extended if the petitioner's motion or affidavit states that there has been no material
36 change in relevant circumstances since entry of the order and states the reason for the
37 requested extension. Extensions may be granted only in open court and not under the
38 provisions of G.S. 50C-10(c).

39 (d) Any civil no-contact order expiring on a court holiday shall expire at the
40 close of the next court business day.

41 **"§ 50C-13. Contents of orders.**

42 (a) A civil no-contact order shall state the following:

43 (1) The name of each person that the court finds was the victim of
44 unlawful conduct by the respondent and the name of any other person

1 protected by the order. The order shall further state that any person
2 named in the order is protected by this Chapter.

3 (2) The date and time the civil no-contact order was issued, whether it is a
4 temporary or permanent order, and the duration of the order.

5 (3) The date, time, and place for any scheduled hearing for extension of
6 the civil no-contact order or for any other order of greater duration or
7 scope.

8 (4) For each remedy in a temporary civil no-contact order, the reason for
9 entering that remedy without prior notice to the respondent or greater
10 notice than was actually given.

11 (b) A civil no-contact order shall include the following notice, printed in
12 conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable
13 as contempt of court which may result in a fine or imprisonment.'

14 **"§ 50C-14. Notice of orders.**

15 (a) The clerk of court shall, or the petitioner may, on the same day that a civil no-
16 contact order is issued, file a certified copy of that order with the sheriff or other law
17 enforcement personnel charged with maintaining criminal records or serving the order
18 upon the respondent.

19 (b) Unless the respondent was present in court when the order was issued, the
20 sheriff, other law enforcement personnel, or special process server shall promptly serve
21 that order upon the respondent and file proof of service in the manner provided for
22 service of process in civil proceedings. If process has not yet been served upon the
23 respondent, it shall be served with the order.

24 (c) Any order extending, modifying, or revoking any civil no-contact order shall
25 be promptly recorded, issued, and served in accordance with the provisions of this
26 Chapter.

27 **"§ 50C-15. Violation.**

28 A knowing violation of a civil no-contact order shall be punished as contempt of
29 court.

30 **"§ 50C-16. Enforcement of orders.**

31 (a) A valid protective order entered pursuant to this Chapter shall be enforced by
32 all North Carolina law enforcement agencies without further order of the court.

33 (b) Any law enforcement officer may make an arrest without a warrant if the
34 officer has probable cause to believe that a person has committed or is committing a
35 violation of a civil no-contact order.

36 (c) The law enforcement officer may verify the existence of a civil no-contact
37 order by telephone or radio communication with his or her law enforcement agency or
38 by referring to the copy of the order provided by the petitioner or the respondent.

39 **"§ 50C-17. Limits on liability of employers.**

40 (a) An employer and an employer's agents who act in accordance with this
41 Chapter shall be presumed to be acting in good faith and, unless lack of good faith is
42 shown by clear and convincing evidence, are immune from civil liability for actions
43 taken under this Chapter.

1 (b) The failure of any employer, or its employee or invitee, to utilize the
2 procedures of this Chapter shall not be negligence, and evidence of the failure to utilize
3 the procedures of this Chapter shall not be admissible as evidence of negligence.

4 **"§ 50C-18. Scope of Chapter; other remedies available.**

5 This Chapter does not expand, diminish, alter, or modify the duty of any employer to
6 provide a safe workplace for employees and other persons. This Chapter does not limit
7 the ability of an employer, employee, or victim to pursue any other civil or criminal
8 remedy provided by law. This Chapter does not apply in circumstances where an
9 employee or representative of employees is engaged in union organizing, union activity,
10 a labor dispute, or any activity or action protected by the National Labor Relations Act,
11 29 U.S.C. § 151, et seq. Nothing in this Chapter is intended to change the National
12 Labor Relations Act's preemptive regulation of legally protected activities, nor to
13 change the right of the State and its courts to regulate activities not protected by the
14 National Labor Relations Act."

15 **SECTION 2.** This act becomes effective December 1, 2003, and applies to
16 actions that give rise to civil no-contact orders issued under this act on or after that date.